

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Suvon, LLC d/b/a FirstEnergy Advisors)	
for Certification as a Competitive Retail)	Case No. 20-103-EL-AGG
Electric Service Power Broker and)	
Aggregator in Ohio.)	

**MOTION TO INTERVENE AND REQUEST TO ESTABLISH A PROCEEDURAL
SCHEDULE AND MEMORANDUM IN SUPPORT
OF INTERSTATE GAS SUPPLY, INC.**

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**MOTION TO INTERVENE AND
ESTABLISH A PROCEDURAL SCHEDULE**

Pursuant to R.C. 4903.221 and Ohio Adm.Code 4901-1-11, Interstate Gas Supply, Inc. ("IGS" or "IGS Energy") moves to intervene in the above captioned proceeding filed by Suvon, LLC d/b/a FirstEnergy Advisors ("Suvon" or the "Company") for certification as a Competitive Retail Electric Service ("CRES") Power Broker and Aggregator in Ohio ("Application"). Additionally, pursuant to Ohio Adm.Code 4901-1-12, IGS moves for the establishment of a procedural schedule in this proceeding. The reasons supporting this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In this proceeding, Suvon seeks certification as a CRES Power Broker and Aggregator in Ohio and authority to operate under the name FirstEnergy Advisors. On February 11, 2020, the attorney examiner suspended the automatic approval process in this proceeding in response to concerns raised regarding the Company's compliance with corporate separation laws because Suvon is an affiliate of the FirstEnergy Ohio distribution companies, The Toledo Edison Company, Ohio Edison Company, and The Cleveland Electric Illuminating Company ("FirstEnergy Ohio EDUs" or "FirstEnergy").¹

For the foregoing reasons, IGS moves to intervene in this proceeding and respectfully requests the establishment of a procedural schedule. This will support a timely resolution of the issues regarding Suvon's Application.

A. IGS' motion to intervene should be approved.

IGS respectfully submits that it is entitled to intervene in this case because IGS has a real and substantial interest in the proceeding, the disposition of which may impair or impede its ability to protect that interest. For purposes of considering requests to intervene in Commission proceedings, Ohio Adm.Code 4901-1-11(A) provides:

¹ Entry at ¶ 3-6 (Feb. 11, 2020); Application at Ex. B-1.

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: (1) A statute of this state or the United States confers a right to intervene. (2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Further, R.C. 4903.221(B) and Ohio Adm.Code 4901-1-11(B), provide that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

As a CRES provider in Ohio, IGS has a real and substantial interest in this proceeding. Because Suvon is an affiliate of the FirstEnergy Ohio EDUs, IGS seeks intervention to ensure the appropriate safeguards are in place to avoid cross-subsidization of resources and preferential access to information through system access or conduit employees. Intervention will allow IGS to protect its interest in a competitive retail marketplace in Ohio that is free from unfair advantages or subsidies flowing between the distribution utilities and its unregulated affiliates. To be clear, IGS does not oppose an affiliate of an EDU providing competitive services, but IGS intervenes in this proceeding to ensure that Suvon does not obtain a competitive advantage merely by virtue of its relationship to the FirstEnergy Ohio EDUs.

Further, IGS and its counsel have substantial experience practicing before the

Commission, including participating in the FirstEnergy Corporate Separation Audit proceeding currently pending before the Commission.² Thus, IGS intervention will not unduly prolong or delay these proceedings. In fact, quite the opposite as IGS is also requesting the establishment of a procedural schedule to streamline the consideration of the Application through an organized process. Additionally, it would be inappropriate to determine this proceeding without IGS' participation, as the other parties in the case cannot adequately represent and protect the interests of IGS in the case.

Finally, the Supreme Court of Ohio has held that intervention should be liberally allowed for those with an interest in the proceeding. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853. In light of the liberal interpretation of the intervention rules, IGS clearly meets the standards for intervention in this proceeding. For the reasons set forth above, IGS respectfully requests the Commission grant this Motion to Intervene.

B. The Commission should establish a procedural schedule in this proceeding.

In addition, IGS moves for an entry establishing a procedural schedule in this proceeding that affords stakeholders the opportunity to commence discovery and subsequently submit comments on the Application filed by Suvon. IGS recommends the following process: (1) commencement of discovery to address questions regarding the Application with an expedited 10-day response period; (2) Initial Comments on the Application due 60 days after the entry establishing the procedural schedule; (3) Reply

² See *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.'s Compliance with R.C. 4928.17 and Ohio Admin. Code Chapter 4901:1-37*, Case No. 17-974-EL-UNC ("FirstEnergy Corporate Separation Audit").

Comments due 80 days after the entry establishing the procedural schedule; and (4) testimony and an evidentiary hearing, if necessary.

IGS appreciates that an affiliate, Suvon, is proposing to offer these unregulated products and services instead of the regulated FirstEnergy Ohio EDUs. However, IGS is concerned that it remains to be seen whether Ohioans will be sufficiently protected against improper subsidization between the regulated utilities and their competitive affiliate as required by Ohio's corporate separation laws. As such, this case should move forward by providing stakeholders the opportunity to develop and submit comments to assist the Commission in making its determination in this proceeding.

An application for certification as a CRES provider must provide "sufficient information to enable the commission to assess an applicant's managerial, financial, and technical capability to provide the service it intends to offer and *its ability to comply with commission rules or orders adopted pursuant to Chapter 4928. of the Revised Code.*" Ohio Adm.Code 4901:1-24-05(A) (emphasis added). R.C. Chapter 4928, among other things, requires each electric distribution utility ("EDU") to implement a formal corporate separation plan to ensure that the EDU will not use its regulated non-competitive services to provide an advantage, preference, or subsidy for the benefit of an affiliate that provides unregulated services. R.C. 4928.17, 4928.18, and 4928.02(H). In order to carry out these provisions, the Commission adopted rules which govern the relationship between an EDU and its affiliates "so a competitive advantage is not gained solely because of corporate affiliation." Ohio Adm.Code 4901:1-37-02(A). Thus, an issue in this proceeding is whether the Commission, based on the information submitted in the Application, is able to assess Suvon's ability to comply with these rules.

At this time, however, IGS submits that the Commission is not able to do so. In fact, some of the information that is provided in the Application merely heightens concerns. For example, the Application notes that Suvon will service a toll-free telephone number for customer inquiries and complaints.³ However, the Application does not mention whether this call center will be shared with other FirstEnergy affiliates, and if so, how the costs will be allocated. The Application also does not address whether these agents will be properly separated from those agents serving the FirstEnergy Ohio EDUs, or if the agents will be marketing the Company's products and services while having access to specific customer information that is otherwise restricted.⁴ Merely stating that the Suvon will comply with the FirstEnergy Corporate Separation Plan, which does not even recognize the existence of Suvon, is insufficient. This is especially true with a recent audit report highlighting areas of concerns regarding interactions with a competitive affiliate.

Additionally, Suvon, an unregulated affiliate, proposes to operate under the FirstEnergy name, which is an issue raised by the auditor in the FirstEnergy's Corporate Separation Audit proceeding currently pending before the Commission. Although FirstEnergy asserted this concern, as well as other findings related to its competitive energy services business, is moot because its former competitive affiliate has since separated from FirstEnergy Corp., the issues have been revived by FirstEnergy through

³ App. at Ex. B-2.

⁴ See *FirstEnergy Corporate Separation Audit*, Final Report of SAGE Management Consultants, LLC (May 14, 2018) ("FirstEnergy Audit Report") at 36.

this filing.⁵

In the FirstEnergy Audit Report, the auditor recommended that an unregulated competitive affiliate of the FirstEnergy Ohio EDUs remove the “FirstEnergy” from its name because it can be viewed as an implied endorsement by the FirstEnergy Ohio EDUs.⁶ However, Suvon’s Application does not address the use of the FirstEnergy name, nor suggest ways to mitigate these concerns despite the contradiction with the Commission’s expressed intent that “a competitive advantage is not gained solely because of corporate affiliation.” Ohio Adm.Code 4901:1-37-02(A).

IGS again notes that it does not oppose an affiliate of an EDU, like Suvon, providing competitive products and services in Ohio; rather, IGS simply submits that the Application lacks sufficient information to determine if Suvon has the ability to comply to Commission rules, such as those relating to corporate separation, as required by Ohio Adm.Code 4901:1-24-05(A). Thus, IGS recommends the establishment of the procedural schedule recommended above to ensure the Commission has sufficient information to review the Application in order to allow Suvon to move forward with its operations in Ohio in compliance with the proper corporate separation safeguards.

Respectfully submitted,

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⁵ *FirstEnergy Corporate Separation Audit*, FirstEnergy Initial Comments (Dec. 31, 2018) at 1-2, 12.

⁶ FirstEnergy Audit Report at 97-99 (recommending “[r]emoving FirstEnergy from the name of FirstEnergy Solutions to eliminate affiliate bias”).

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CERTIFICATE OF SERVICE

I certify that this *Motion to Intervene and Request to Establish a Procedural Schedule and Memorandum in Support of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on March 25, 2020. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. In addition, a copy was sent to the parties listed below.

/s/ Bethany Allen

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Case No(s). 20-0103-EL-AGG

Summary: Motion Motion to Intervene and Request to Establish a Procedural Schedule and Memorandum in Support of Interstate Gas Supply, Inc. electronically filed by Bethany Allen on behalf of Interstate Gas Supply, Inc.